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ABSTRACT

During the eight years of President Ronald Reagan's administration, deregulation of broadcasting was pursued at least as vigorously as other attempts of the "Reagan Revolution" to lessen the impact and influence of the federal government. The Federal Communication Commission's (FCC) "one-to-a-market" rule (which limits licenses to one broadcast facility in any given market) was one of the broadcast ownership rules that was rendered far less important by the exceptions granted by the Reagan appointees' influence. The purpose of the rule, insuring a "plurality of voices" in the marketplace through diversity of ownership, was a worthy and appropriate goal of regulation. However, the actions of the FCC in granting an increasing number of exceptions have not helped attain that goal. (Twenty-six references are attached.) (Author/RAE)

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DON'T WORRY - BE HAPPY:
Changes in the "one-to-a-market" rule and their effect on diversity of voices

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Abstract

During the eight years of President Ronald Reagan's administration, deregulation of broadcasting was pursued at least as vigorously as other attempts of the "Reagan Revolution" to lessen the impact and influence of the federal government. The FCC's "one-to-a-market" was one of the broadcast ownership rules that was rendered far less important by the exceptions granted by the Reagan appointees' influence. It is argued in this paper that the purpose of the rule, insuring a "plurality of voices" in the marketplace through diversity of ownership, was a worthy and appropriate goal of regulation and that the actions of the FCC in granting an increasing number of exceptions has not helped attain that goal. The paper discusses the background of deregulation and the "one-to-a-market" rule and the effect of the exceptions made to the rule.

TITLE: Don't worry, be happy: changes in the "one-to-a-market rule and their effect on diversity of voices.

RUNNING TITLE: Don't worry

Introduction

If one were looking for a single word that would summarize the overall direction and effect of the Reagan administration's policy-making activities, the word "deregulation" would certainly come to mind. Vast areas of the federal bureaucracy have been eliminated or, at the very least, curtailed through budgetary manipulations. Indeed, even the federal judiciary, more than half of which has been appointed by the Reagan administration (Bush Can Finish Remake of Courts, 1989), is engaged in a form of deregulation, as witnessed by rumors of re-examination of recent past decisions.

The New York Times recently reported in an article entitled, "Deregulation Has Gone Too Far, Many Telling New Administration." (Berke, 1988), that political experts feel deregulation has resulted in either economic or political harm in many areas of public concern, such as the airline industry and the savings and loan industry.

Some critics have contended that the deregulation of the savings and loan industry is the major cause of the 100 billion dollar losses recently reported. (Nightline, 1989). The Chair of the United States Senate Banking Committee, Senator Donald Riegle of Michigan, contends the savings and loan industry losses to date will cost the taxpayers about $1,000 per household, that the Reagan Administration never dealt with the problem while it was developing, that the Federal Savings and Loan Insurance Corporation is out of money, and that there is a continuing loss of one billion dollars per month in bad loans and other debts. "It was almost as if, in 1982 and 1983, the (federal) administration put out a sign saying welcome plunderers."

In the airline industry, during the eight years of the Reagan Administration, the chances of being in an accident while flying on a United States carrier, dropped from one in every 11 million air miles to one in every 7 million air miles. That represents a forty percent increase brought on by increased competition engendered by deregulation (Morning Edition, 1989).

The debate that goes on, whether deregulation is a proper response to the problems that confront significant segments of our society, continues to ignore what many might consider one of the most important areas of federal deregulation, commercial broadcasting, particularly as concerns media ownership. Historically, the regulation of broadcasting was based on the constitutional premise that the First Amendment rights of the viewers and listeners were paramount. However, the deregulation of broadcasting seems to have been carried out under the premise that the First Amendment rights of the broadcasters should be given greater, if not paramount, consideration.

In the broadcasting industry, one has only to look at a few recent statistics to discern the general trend. As concerns station sales, in 1981 24 televison stations were sold for $228 million; in 1986, 128 stations were sold for a total of $2,700 million, a ten-fold increase on both sides of the equation. Twenty-five percent of all stations sold in 1987-88 were owned for less than 3 years (Public Trust or Private Property, 1988). In radio in 1988, a Los Angeles FM station was sold for $79 million; the prediction for 1989 is that a radio station will be sold for $100 million (Tedesco, 1988). Trade press stories of VHF network-affiliated television stations selling for more than $200 million are becoming increasingly common. One VHF station in Boston was recently sold for upwards of $400 million. And during one 17 month period, all three major television networks were either sold or underwent changes in control (Public Trust or Private Property, 1988).

In 1988, media stocks (both press and electronic)) showed a 17 percent gain, as compared to the Dow Jones Industrial Index's gain of an average of just under 12 percent. The increase was directly related to the extreme takeover activity generated after the stock market's "swan dive" in October, 1987 (Norby, 1989).

Undoubtedly, some of these broadcast industry changes can be attributed to changes in the "anti-trafficking" rule, which when passed in 1962 stated that a broadcast station license had to be held for at least one license term, a three year period. Under the Reagan Administration, "the Commission (FCC) reversed its position on this issue after concluding that a willing buyer was more likely to serve the public interest than an unwilling owner prohibited from selling the station" (Carter, Franklin and Wright, 1986, p.121). United States Representative Al Swift (D, Wash.) has stated, "When they start trading in broadcast licenses like they trade in pork bellies, you have a problem." (Public Trust or Private Property, 1988). Dr. Beverly Chan, Director of Communication, United Church of Christ, commented, "Where is the public interest standard? There is less news, there are fewer local programs, all the kinds of things that are in the public interest are in danger because of trafficking in licenses". (Public Trust or Private Property, 1988). Indeed, many have called for the reinstitution of some form of anti-trafficking provision.

One consistent FCC policy objective has always been "diversity of ownership" that would lead to "diversity of voices"- that the principles of a democratic society would best be served by a wide open and robust debate on issues of public importance. (Johnson, 1987). The ownership rules established by past FCCs and validated by numerous federal courts were designed to further this goal. But one would be hard-pressed to fashion an argument for the success of these efforts. It would be a far easier task to argue that these ownership rules have failed, both in their effect on the broadcasting industry and in terms of their benefits to the

public, the same public that broadcasters are statutorily bound to serve.

> When Congress realized that a relative few could have access to the airwaves, it feared that the channels would become concentrated into even fewer, monied hands. The broadcasting industry was, from the start, prone to excessive concentration. The early leaders in radio broadcasting were RCA, General Electric and Westinghouse. Through a system of cross-licensing, they controlled the manufacture of radio appartus and became known as the 'radio trust'. They quickly recognized, too, the economic advantages of tying individual stations together through chain broadcasting arrangements. Thus, Congress moved under the spur of widespread fear that in the absence of government control the public interest might be subordinated to monopolistic domination in the broadcasting field. (Cusack, 1985, 609-610).

When asked to distinguish the most important aspects of broadcast deregulation by a student, one of the authors responded, "The Fairness Doctrine, the "anti-trafficking" rule and the "one-to-a-market" rule." Why these three in particular? The Fairness Doctrine in terms of its potential negative impact on the trust of the people in our system of broadcasting, the anti-trafficking rule because it prevented the trading in broadcast licenses in a "futures"-type marketplace, and the "one-to-a-market" rule, in terms of its impact on the concentration of control of the broadcast media, an effect that would totally contravene the policy objective of diversity in broadcasting.

The "One-To-A-Market "Rule
History and Development

The FCC has long been concerned about concentration of control in broadcasting, particularly about competition in the local marketplace. This concern stems, no doubt, from the concept of "localism", that that was dominant in all areas of FCC regulation under the "public interest convenience and need" standard. A convenient date for the beginning of this concern has been fixed in 1938, when the FCC;

> received an application for a standard broadcasting facility in Flint, Michigan from applicants who already controlled another corporation that operated a standard broadcasting station in the same area. Although there were no other applicants, the Commission refused to grant the second facility without a compelling showing that the public interest would be served in such a situation. (Carter, Franklin and Wright, 1986, p.142).

This situation resulted in the passage of the1940 "duopoly" rule, that stated the FCC "would not grant a license to any applicant or licensee who already held a similar facility or license so located that the service areas of the two would overlap." (Carter, Franklin and Wright, 1986, p.142).

During the 1960's, the continuing ascendency of the broadcast media was thought to be at least partially responsibile for a decline in the number of newspapers. The FCC, thinking that this made the potential impact of broadcasting stations "significantly greater" and that this "reinforced the need for diversity in the broadcast media", resulted in the FCC's prohibition against any further duopoly grants. (Carter, Franklin and Wright, 1986, p. 142). However, the words "similar facility" had always been interpreted to mean service of the same type, not necessarily services in

different facilities. Applicants could still have one AM, one FM and one TV station in the same market or service area.

In 1970, the FCC proposed what it considered to be the logical extension of the duopoly rule, called the "one-to-a-market" rule. In the Matter of the Rules Relating to Multiple Ownership, 22 F.C.C.2d, 306 (1970), licensees would be limited to one broadcast facility in any given market, regardless of the nature of the facility or type of service rendered. In rejecting an argument put forth against the rule, "...that the good profit position of a multiple owner in the same market results in more in-depth informational programs being broadcast and thus, in more meaningful diversity", (Carter, Franklin and Wright, 1986, p. 143), the FCC stated that,

> We do not doubt that some multiple owners may have a greater capacity to so program, but the record does not demonstrate that they generally do so. The citations and honors for exceptional programming appear to be continually awarded to a very few licensees- perhaps a dozen or so multiple owners out of a total of hundreds of such owners. (Carter, Franklin and Wright, 1986, p. 143)

In the Order adopting the proposed rule, the FCC stated that,

> It is elementary that the number of frequencies available for licensing is limited. In any particular area, there may be many voices that would like to be heard, but not all can be licensed. A proper objective is the maximum diversity of ownership that technology permits in each area. We are of the view that 60 different licensees is more desirable than 50 and even 51 are more desirable that 50. In a rapidly changing social climate, communication of ideas is vital.....No one can say that present licensees are broadcasting everything

> worthwhile that can be communicated. We see no existing public interest reason for being wedded to our present policy that permits a licensee to acquire more than one station in the same area.
> In the Matter of the Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations. 22 FCC 2d 306 (1970), paragraph 21

When faced with possibly competing policy objectives, such as encouraging diversity of ownership and promoting the growth and development of UHF television, the FCC was not blind to the fact that much of the funding for UHF was going to come from existing broadcasters. The FCC decided to permit radio-UHF combinations but indicated that these applications would be reviewed on a case-by-case basis. They also decided that the rule would not require divestitures, since they did not want to create economic instability. (Carter, Franklin and Wright, 1986).

What was left was a prohibition against VHF-radio combinations as well as AM-FM combinations, even though promoting the growth of FM was, at that time, another policy objective, and the FCC had promoted AM-FM combinations throughout the 1950's. On reconsideration, the FCC modified the rule and decided to permit AM-FM combinations. Multiple Ownership of Standard, FM and TV Broadcast Stations, 28 F.C.C.2d, 662 (1971).

These actions and exceptions resulted in only one outright ban, on VHF-radio combinations.

Early in 1988, the FCC announced its intention to further relax the one-to-a-market rule, but in October of that same year, it announced that action on the rule would be delayed (Halonen, 1988c). These proposed changes would have permitted broadcasters to own stations that were a bit closer to each other than was previously allowed. The original recommendation would also have altered the rule to permit ownership of radio and UHF stations in all markets, and radio-VHF stations in the top 50

markets. Meanwhile, Congress indicated disapproval, suggesting that the rule be left in place, but that a waiver policy be instituted on a case-by-case basis. The fact that these proposed changes occurred during the Capital Cities-ABC merger and would have benefitted them was not lost to some observers (Halonen, 1988a)

Early in December 1988, the FCC announced that it was "relaxing" the duopoly rule. Voting to retain the rule, the FCC announced that it would look favorably upon waiver requests from broadcasters in the top 25 markets if, "..at least 30 separately owned or operated broadcast licensees or 'voices' would remain after the proposed combination." (Halonen, 1988a p.3).

On January 16, 1989, Electronic Media reported that New England Television Corp., which owns CBS affiliate WNEV-TV in Boston, agreed to buy WHDH-AM, previoulsy owned by RKO General, for $14 million in the first deal ever to involve co-ownership of a radio and TV station in the same market since the FCC relaxed its rules. (Electronic Media, 1989).

Discussion

When reviewing the record of the Reagan era FCC, one must wonder why the commission felt it necessary to deregulate the broadcasting industry with such speed and completeness. One could say that the importance of the changes in the "one-to-a-market" rule pale by comparison to such other successful aspects of deregulation, such as the repeal of the Fairness Doctrine. If the economics of the broadcasting industry were so affected over the years by increasing competition from cable and other new technologies, and a "level playing field" was so necessary, why did they wait to, virtually, the last minute to propose changes in broadcast ownership?

It could be argued that these changes had to wait other FCC actions concerning the regulation of the new, emerging technologies- that the concept of the "level playing field" or "new video marketplace" was made more important by the regulatory decisions made concerning such areas as the financial interest and syndication rules, by the decisions made concerning the new technologies and, perhaps most importantly, by a combination of regulatory and Congressional action concerning cable, the most important being the passage of the Cable Communications Policy Act in 1984. The question of whether these new technologies represent effective competition for over-the-air broadcasting remains unanswered. (Krasnow and Botein, 1986)

The rationale ultimately offered was that freer economic competition among the electronic media would ultimately inure to the benefit of the people if one were to merely adjust or change their definition of the public interest. The public interest, said the FCC, was now to be defined as the public's interest. The public would ultimately decide by a turn of the dial. What the public wanted to watch or hear would succeed in the freer economic marketplace produced by deregulation.

The trouble with this new definition of the public interest, of course, is that it completely ignores the interests of those not capable of participating in this new economic equation. Those people who were not able to buy the products advertised on television or the radio would not have their programming needs fulfilled. One critic has commented that the emphasis on "narrowcasting" of programming to special interest audiences and the need to purchase the means of transmission such as cable television or computer linked services, is eliminating the "public" service programming previously encouraged by the FCC. (Tunstall, 1985) The ethical correctness of this regulatory stance will, no doubt, be debated by scholars and media professionals for years, but as concerns ownership of the electronic media, the problems become even broader in terms of their economic impact.

It was always assumed that diversity of ownership would ultimately yield a diversity of voices and that this would serve the First Amendment interests of the people by providing the "marketplace of ideas" previously thought to be so important to any definition of the public interest. But this was not the result because regulation inhibits the operation of a free marketplace and points out the dynamic tension that exists between economics and regulation.

Diversity of voices in broadcasting has never been achieved. The owners of the electronic media tend to be wealthy white males, who belong to the same socio-economic class, tend to think alike, and who, to a large degree are conservative Republicans. (Bagdikian, 1987, p.6).The pressure cooker of the economic marketplace was held somewhat in place by the lid of FCC regulation, particularly the ownership rules. These rules achieved diversity of ownership, but because of economic realities, did not achieve a meaningful diversity of voices, because the voices were saying more or less the same thing.

> The United States has an impressive array of mass communications. There are 1,700 daily newspapers, 11,000 magazines, 9,000 radio and 1,000 television stations, 2,500 book publishers and 7 movie studios. If each of these were operated by a different owner, there would be 25,000 inidividual media voices in the country.....But there are not 25,000 owners. Today, 50 corporations own most of the daily output of daily newspapers and most of the sales an audience in magazines, broadcasting, books and movies. (Bagdikian, 1987, pp.xix-xx)

Why, then, one could correctly ask, should we be concerned about these changes? One could argue that the rules didn't work and that we should try this new approach, the increased economic competition brought about by deregulation. But one must look at why the rules didn't work before one may begin to form a response.

Some critics have called into question the evidence used by the Reagan era FCC in its rush to deregulate. Criticism includes the failure to adequately define the term "diversity", a reliance on outdated and badly flawed research on the performance of group-owned electronic media outlets, and a failure to project what group ownership will mean to the future of broadcasting in the United States. (Levin, 1986)

One of the authors, during the corporate phase of his career, was Director Legal Services for a large New York advertising agency. When the Board of Directors decided that more control was needed concerning the agency's procedures, it fell to him to draft a procedures manual for the agency. Two years later, after conferring with virtually everyone in the agency and getting them to agree with the recommendations, the manual was issued with great fanfare and flourish. The Chairman held a series of group meetings with every employee and stated, in no uncertain terms, that this manual was to be followed to the letter, that no

exceptions would be tolerated and that their jobs would be in jeopardy if they did not act accordingly. Every manual was numbered and assigned to every employee with the admonision that they were responsible for it, could not copy it and must return it when they left the agency or they would not receive their final paycheck.

Two days later, the agency was charged to produce a series of commercials for its biggest client. The commercials had to be finished in three days. Every procedure in that manual was violated in order to finish the job.

Once exceptions are made to rules, they begin to loose their force and effect. And this loss of effect continues in direct proportion to the number of exceptions made.

Perhaps this was what happened to the high purposes stated on behalf of the broadcasting ownership rules when they were originally passed, particularly the "one-to-a-market" rule. Perhaps the exceptions became the rule, to the extent that the rule itself did not retain any validity.

The Reagan Administration proceded with the deregulation of broadcasting at a pace previously unmatched. The rationale or justification offered for these actions was, essentially, a redefinition of the term, "the public interest, convenience and necessity". No longer would the definition of the public interest be what a government agency said it was; rather, the new definition would be premised on what the public supposedly wanted to watch or listen to. The failed regulatory model would be replaced by a vacuum called deregulation, or the free marketplace.

The future of electronic media regulation seems to be a continuation of the Reagan administration's policy of speedy deregulation. Indeed, such a policy has been advocated by some groups, including the Heritage Foundation of Washington, D.C.

(Halonen, 1988d). The outlook for the "free marketplace" may not, however, increase economic activity with regard to station sales. Several sources are indicating that there is a glut of stations on the selling block and the market maybe becoming somewhat soft. (Buckman, 1988a, b and c; and Midwest's WCCC-TV for sale, 1988)

Since these changes are of such recent vintage, one might only ponder the effects on the still valid concept of diversity of voices. No doubt, this will prove to be a ripe field of future investigation. Indeed, the authors are currrently involved in a case study of the effects of the changes in the "one-to-a-market" rule in a major market.

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